

BOISEY NEAL, \* IN THE  
Petitioner CIRCUIT COURT  
v. \* FOR  
DAVID GREENE, Warden \* ANNE ARUNDEL COUNTY  
-and- \* HC No. \_\_\_\_\_  
STATE OF MARYLAND \* Case No. 02-K-07-001393  
Respondents \*

.....oo.....

PETITION FOR WRIT OF HABEAS CORPUS AD SUBJICIENDUM

Now comes Petitioner Boisey Neal, pro se, and pursuant to Md. Code Ann., Cts. & Jud. Proc. §3-701 et. seq., praying the issuance of a Writ of Habeas Corpus Ad Subjiciendum; upon the premise thaty Neal is being deprived of his lawful liberty, and that he should be released forthwith, and in support says;

1. Cts. & Judicial Proceedings §3-704 permits inquiry into whether his continued detention is lawful, and whether he should be released immediately;
2. It is noted that Mr. Boisey Neal changed his name to Boisey Oshi, yet to avoid confusion- Neal uses "Neal" for these pleadings;
3. JURISDICTION: Jurisdiction in the instant case is "original", calling on full common-law and equity powers defined in Cts.,§1-501. (An. Code 1957, art. 26. §30)

4. HISTORY OF THE CASE :

Mr. Neal was arrested in North Carolina October 18, 2006, in Case No. 06-CRF-055-629. Neal was detained in the Wilson County Detention Center from October 18, 2006- until his transfer to Maryland June 14, 2007. (EX. "A" & "B"). With the Maryland Warrant served, Neal was transported from North Carolina to Maryland JUNE 14, 2007. Case No. 06-CRF-055-629 was dismissed. (EX "C"). After return to Maryland, Mr. Neal pled guilty to armed robbery and use of a handgun in a crime of violence February 05, 2008.

Judge William Mulford started the Anne Arundel County sentence June 14, 2007. This represented from the starting date of June 14, 2007 to the sentencing date (March 28, 2008), which totals 288 days. The Case History will be supplemented when needed.

5. GROUNDS FOR RELIEF :

(A) MR. NEAL IS ENTITLED TO PRE-TRIAL CREDITS FROM OCTOBER 18, 2006 TO JUNE 14, 2007, AS THESE DAYS REPRESENT TIME SERVED ON THE CRIME HE WAS ARRESTED IN NORTH CAROLINA THAT RESULTED IN DISMISSAL;

(B) CRIM. PROC. §6-218(b)(2) CONTAINS COMMAND LANGUAGE "SHALL", WHICH MANDATES THAT MR. NEAL BE AWARDED CREDITS BECAUSE OF A CHARGE THAT RESULTED IN DISMISSAL;

(C) MR. NEAL IS UNLAWFULLY RESTRAINED FROM HIS LAWFUL LIBERTY, AND HABEAS CORPUS IS THE APPROPRIATE AVENUE FOR INQUIRY INTO THE LEGALITY OF HIS RESTRAINT & DETENTION;

- (D) BY OPERATION OF LAW, EVEN THOUGH BALTIMORE CITY INTENDED THAT SENTENCE TO RUN CONSECUTIVE TO THE INSTANT SENTENCE FROM ANNE ARUNDEL COUNTY, THE SENTENCE COULD ONLY BE RUN CONCURRENT, DUE TO THE ANNE ARUNDEL COUNTY BEING EXPIRED WHEN BALTIMORE RESENTENCED NEAL ON THE ILLEGAL SENTENCE THAT WAS IMPOSED; THIS MEANS BALTIMORE COULD NOT MAKE ITS SENTENCE CONSECUTIVE TO AN EXPIRED SENTENCE;

The case will supplement additional grounds if and when needed.

6. SUPPORT FOR GROUND "A":

Criminal Procedure §6-218(b)(2) states: "If a defendant is in custody because of a charge that results in a dismissal or acquittal, the time that would have been credited if a sentence had been imposed SHALL be credited against ANY sentence that is based on a charge for which a warrant or commitment was filed during that custody." Id. While Mr. Neal was confined in North Carolina under Case No. 06-CRF-055-629, the Maryland warrant was served June 14, 2007. Pre-Trial Credits earned between October 18, 2006 to June 14, 2007 are owed against the Maryland term of confinement, because the North Carolina charge resulted in dismissal and they total 239 days credit never awarded to the instant sentence.<sup>1</sup>

7. SUPPORT FOR GROUND "B":

Command language is discussed in Md. Rule 1-201(a): "When a Rule, by the word "shall" or otherwise, mandates or prohibits conduct, the consequences of

noncompliance are those prescribed by those rules or by statute." The Rules are established to promote the orderly and efficient administration of justice and are to be read and followed. BROWN V. FRAILEY, 222 Md. 480, 161 A.2d 128 (1960). The rules are not guides to the practice of law, but precise rubrics "established to promote the orderly and efficient administration of justice and are to be read and followed. ROBINSON V. BOARD OF COUNTY COMM'RS 262 Md. App. 625 (1974). The Rules have force of law. STATE V. DIGGS, 24 Md. App. 681, (1975). This command language of Crim. Proc. §6-218(b)(2) mandates application of the pretrial credits earned in North Carolina because the N.C. charges did result in dismissal, -and- the law prohibits Mr. Neal serving "dead-time." See e.g. PARKER V. STATE, 193 Md. App. 507, (time spent in custody that will not be credited to any valid sentence.) GILMER V. STATE, 389 at 666, quoting FLEEGER V. STATE, 301 Md. 155, 163, 165 (1984). On re-sentencing in Baltimore City, Neal asked whether he got dead time? T.14 (12/20/2019. The State agreed that Neal was not serving any. Id. p. 15. It is essential that the North Carolina credits be applied to the term to avoid dead time.

FOOTNOTES

1. Reconciling Md. Code Ann., Crim. Proc. §6-218 (2007 Supp.) with Md. Code Ann. Cts. & Jud. Proc. §12-702(a)(2007 Supp.) suggests that the Gen. Assembly intended for a defendant to receive credit for the time served on a previous sentence that is later vacated. PARKER V. STATE, 193 Md. App. 474, 997 A.2d 914. Mr. Neal's case clearly applies to C.P. §6-218(c) which is titled "credit for sentence set aside." PARKER also refers to "R.D. Hursh, " Right To Credit for Time Served under Erroneous or Void Sentence or Invalid Judgement of Conviction Necessitating New Trial," 35 A.L.R. 2d 1283 (1954): "In cases dealing with resentencing necessitated by the invalidity of the original sentence, the courts are not in agreement on the question whether time served under the first sentence is to be credited against time served under the second. "In some jurisdictions, allowance of such credit is provided for by statute. 997 A.2d 929. Where there are two sentences and the first is set aside, the credit earned applies to the remaining term. Further, the cardinal Rule of statutory interpretation is to ascertain and effectuate the intent of the legislature. CHOW V. STATE, 393 Md. 431 (2006). In NORTH CAROLINA V. PEARCE, 395 U.S. 711 (1969) held that upon resentencing credit must be given for any portion of the sentence previously served. The legislative intent also importantly applies to the avoidance of "banked time." PARKER, 193 Md. App. 507 defines "banked time" to mean "time spent in custody that will not be credited to any valid sentence." See GILMER, 389 Md. at 666, quoting fleeger v. State, 301 Md. 155, 153, 165, 482 A.2d 490 (1984); DEDO V. STATE 343 Md. 2, 9 (1996). In GILMER, the Court held the Circuit Court erred when denying him credit for time he served on the nolle prossed charge. Id at 676-677. FLEEGER importantly notes that "a defendant receives as much credit as possible for time spent in custody: 301 Md. at 165 (legislative intent), and also the intent, as explained at 163 is to ELIMINATE time spent in custody that will not be credited to any valid sentence."

8. SUPPORT FOR GROUND "C" : (ANNE ARUNDEL COUNTY)

When it appears to this Court that due to circumstances Mr. Neal is detained without legal warrant or authority, he should be released immediately. See Cts. & Jud. Proc.

§3-704(b). Several related issues help the factfinder reach the conclusion that Neal should be released as soon as possible. It is couched in well-settled law that the State of Maryland is a jurisdiction that allows the Pretrial credits from North Carolina by Statute.

See Crim. Proc. §6-218. This 239 days, earned between October 18, 2006 and June 14, 2007, would be applied to the term. Before application of diminution credits, the max date would have come and gone. Applying diminution credits under Corr. Services §§3-704-707, (See Corr. Time Credit Record, attached\*).<sup>2</sup> Even with a portion of the 2502 credits, the Anne Arundel sentence would have expired long ago.<sup>3</sup>

(BALTIMORE CITY)

The Baltimore City Circuit Court originally intended to impose the sentence consecutive to the Anne Arundel sentence.<sup>4</sup> Baltimore City imposed several ten (10) year sentence, which were imposed to run concurrent to each other, along with a five (5) year no-parole sentence also concurrent. The total ten (10) year term was to run consecutive to the Anne Arundel County 15-year sentence. The aggregate would have been 15 years plus ten, which was to run consecutive. The problem with that plan was

that Baltimore City imposed an illegal sentence.

Rather than impose a sentence which would increase the entire term to 25 years, the term was illegally increased to 27 years.<sup>5</sup> The court then waited 10 years and nine (9) months to bring Mr. Neal back to court for correction of his sentence. (See T.14, 12/20/19, Balt. City.) By then, the fifteen year Anne Arundel County sentence had expired. The impact was that the Court had to resentence Mr. Neal on the Baltimore City sentence, but it could not impose the ten (10) year sentence "consecutive" to the 15 year sentence that expired. The court stating the ten (10) years to run "consecutive", would be empty words, because there was no active or existing sentence for the 10 to be consecutive to.<sup>6</sup>

Finally, last but certainly not least, the Commitment Record reflects that on Resentencing in Baltimore City- on December 20, 2019, the ten (10) year sentence was imposed to run consecutive to A.A. County. (Copy is attached\*). When comparing the Commitment Record to the transcripts, ambiguity is created, and the Rule of Lenity should be invoked.<sup>7</sup> Mr. Neal explained that he physically served 13 years and 6 months on the Anne Arundel 15 year sentence. (T.15, 12/20/19). However, the court informed the parties that the sentence would date to October 5, 2006 "WHICH WAS THE DATE OF THE OFFENSE." T.19, 15-17, 12/20/19. If the court finds ambiguity, it should invoke the Rule of Lenity.<sup>8</sup>

When there is a dispute between the Commitment Record and the transcripts, the transcripts prevail. See DEDO V. STATE, 343 Md. 2,9, 680 A.2d 464 (1996). The preamble to H.B. 650 (Md. 1974), which enacted Art. 27, §638C, established that its purpose "[was] of providing that under certain circumstances, persons shall receive credit against their sentences for any time spent in custody." Laws of Maryland 1974, ch. 735. ; See GILMER, 389 Md. at. 665.

FOOTNOTES\*\*\*

2. Treating both A.A. County and Baltimore sentences as one term, the 2502 credits would only apply once. At the rate of 5 GCC per month, awarded in advance, in Good-Conduct days alone would total 1500 days. Given in advance, 1500 GCC reducing the max date of Oct. 18, 2021- would reduce the release date (Mandatory Supervision Release) to August, 2017.
3. Expiration of the A.A. sentence in 2017 would be far ahead of re-sentencing in Baltimore City Dec. 20, 2019.
4. See T.12, T.17, T.18, (12/20/19, Balt. City)
5. See T.12,14-15; T.7
6. A sentence cannot be consecutive to another sentence "In posse", only consecutive to a sentence "in esse." (In esse means "in being, or actually existing" See BLACK'S LAW DICTIONARY, p.698, 5th Ed. 1986. "In posse" means :That which is not, but may be". Id. For example, a child before birth is in posse, and after birth- "in esse" (BLACKS, Id. at p.16. Two places referring to a sentence imposed consecutive to a sentence in posse or non-existent, See STATE V. WHITE, (citation omitted, 1979)(overruled on other grounds). Also in Corr. Services §9-202, where a person on parole gets a new charge, and resolves the new charge before being violated on parole, even if the court "says" the sentence for the new charge is to run "consecutively," it cannot, because the sentence on parole is in posse.
7. The Rule of Lenity, as it applies to sentences, is that if a sentence is ambiguous, it can be interpreted in more than one way. When imposing the Baltimore City sentence at resentencing, : (1) first, it was imposed consecutive (T.17, 12/20/19). The court also gave the sentence a start date of October 5, 2006. T.19, 12/20/06.

FOOTNOTES, cont.

8. Fundamental fairness dictates a criminal defendant understand fully the penalty he is to pay for his transgressions.<sup>1</sup> If there is any doubt as to the penalty, the Rule of Lenity dictates that the lesser penalty be favored over the harsher one. See e.g. ROBINSON V. LEE, 317 Md. 371 (1989); GATEWOOD V. STATE, 244 Md. 609 (1966); Ex Parte Benton, 10 N.J. Super. 595 77 A.2d 517 (1950); WRIGHT V. STATE, 24 Md. App. 309,330; In Re Swink 243 N.C. 86 (1957). Applying the Rule of Lenity here, would simply construe the Baltimore sentence to be running or concurrent, because there was no pre-existing sentence or status quo (as stated in WHITE.) Ambiguous penal statutes are also construed in favor of the defendant. HASKINS V. STATE 171 Md. App. 182 (2006); WILSON, 157 Md. App. at 98).

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9. ADDITIONAL GROUNDS

- 9.(A) THE DOCTRINE OF LACHES AND THE OBJECTION RULE SHOULD BOTH BAR ANY TARDY OBJECTION FROM THE STATE;
- 9.(B) AT RESENTENCING, THE COURT HAS TO TREAT THE SENTENCING AS IF IT WERE THE ORIGINAL;
- 9.(C) IN ACCORDANCE TO STATE V. SAYRE, THE BALT. CITY SENTENCE IS "FINAL" DESPITE UNDER OPERATION OF LAW- IT IS CONCURRENT

10. DISCUSSION OF GROUND 9.(A):

The "Doctrine of Laches" is based upon maxim that equity aids the vigilant and not those that slumber on their rights. It is defined as neglect to assert rights or claim and operates as a bar in court of equity. Similarly, the State raised no objection to the Court's position as to the starting date of October 5, 2006- as the date the crime was committed, or the assignment of a start date. Rule 4-323 is titled "Method of making objections", and the timeliness of the objection determines waiver.

10. cont.

The State "waived" any complaints with respect to the sentence.

11. DISCUSSION ON 9.(B):

The sentencing court must approach its task as if no sentence has been imposed. BARTHOLOMY V. STATE, 267 Md. 175, 195, 297 A.2d 696 (1972); Accord JONES 2010 Md. LEXIS 266, Slip op. at 6. Therefore, the trial court is charged with exercising its discretion at sentencing as if the sentencing was occurring for the first time. JONES, 2010 Md. LEXIS 266, (slip op.)

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(citation omitted.). Fundamental fairness and due process are part of the sentencing.

12. DISCUSSION OF GROUND 9.(C):

Mr. Neal asserts the Baltimore City closes the chapter on both A.A. Co. and Balt. City cases, In STATE V. SAYRE, 314 Md. 559, 562, 552 A.2d 553 (1989), the court may modify or reduce a sentence, but cannot increase it. Sayre committed an assault requiring a consecutive sentence by statute. The court imposed it concurrent, but waited until Sayre left the courtroom, to call him back and make the sentence consecutive as required. The State cannot ordinarily call a person back into the court to increase the sentence, except under the rare circumstance the statute mandates consecutive sentences.

13.: CONCLUSION :

THEREFORE, for the reasons stated, Mr. Neal prays the following relief:

- (A) THAT HABEAS CORPUS RELIEF BE GRANTED;
- (B) A HEARING BE SCHEDULED ON THE MERITS;
- (C) IF A HEARING IS NOT SCHEDULED, THAT A SHOW CAUSE ORDER BE ISSUED TO REQUIRE THE RESPONDENT TO EXPLAIN WHY THE WRIT SHOULD NOT BE ISSUED.

Respectfully submitted ;

  
Mr. Boisey Neal, #349871  
SID#978847, D.R.C.F.  
2020 TOULSON ROAD,  
JESSUP, MD 20794

CERTIFICATE OF REDACTION

I hereby certify the following pleadings fully complies with Rule 20-201.

  
Mr. Boisey Neal

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing  
Petition for Issuance of a Writ of Habeas Corpus  
was mailed this 20<sup>th</sup> day of SEPTEMBER, 2022,

to:

MR. DAVID GREENE, Warden  
D.R.C.F.-2020 TOULSON RD  
JESSUP, MD 20794

-and-

OFFICE OF THE ATTORNEY GENERAL  
200 SAINT PAUL PLACE  
BALTIMORE, MD 21202

*fisher*  
BOISEY NEAL, #349871  
DRCF  
2020 TOULSON RD  
JESSUP, MD 20794

BOISEY NEAL,  
Petitioner

v.

DAVID GREENE, Warden  
Respondent

< IN THE  
CIRCUIT COURT

< FOR  
ANNE ARUNDEL COUNTY

< HC No. 02-K-0070  
CASE No. 02-K-07-001393

.....oo.....

WRIT OF HABEAS CORPUS AD SUBJICIENDUM

To the Clerk of the Court:

Kindly set the above titled matter down on the Docket, and schedule a hearing for the appearance of the Petitioner as follows:

SEND THE WRIT TO: MR. DAVID GREENE, Warden  
DORSEY RUN CORR. FACILITY  
2020 TOULSON ROAD,  
JESSUP, MARYLAND 20794

SEND THE WRIT FOR: BOISEY NEAL, #349-871  
AKA: BOISEY OSHI  
DORSEY RUN CORR. INSTITUTION  
2020 TOULSON ROAD,  
JESSUP, MD 20794

A hearing is scheduled for the \_\_\_\_\_ day of \_\_\_\_\_  
2020, for Room \_\_\_\_\_ in the Courthouse, at \_\_\_\_\_ O'Clock,  
\_\_\_\_\_. M. Issuance of the Writ will ensure the presence of  
the Petitioner for the hearing.

\_\_\_\_\_  
JUDGE